

**CRIMINAL USE OF A FIREARM  
IN THE FIRST DEGREE  
(Displays weapon)  
Penal Law § 265.09(1)(b)  
(Committed on or after Nov. 1, 1996)**

The (specify) count is Criminal Use of a Firearm in the First Degree.

Under our law, a person is guilty of Criminal Use of a Firearm in the First Degree when that person commits any Class B violent felony offense and that person displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm.

The following term used in that definition has a special meaning:

A CLASS B VIOLENT FELONY OFFENSE includes (specify name of felony or felonies and define).

The element that the person *display what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm* does not require the People to prove that the object displayed was actually a firearm. What the People are required to prove is that the person consciously displayed, or manifested the presence of, something that could reasonably be perceived as a pistol, revolver, rifle, shotgun, machine gun or other firearm and that the person, to whom the item was displayed or manifested, perceived it as a pistol, revolver, rifle, shotgun, machine gun or other firearm.<sup>1</sup>

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, the following element:

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<sup>1</sup> See *People v Lopez*, 73 NY2d 214 (1989); *People v Baskerville*, 60 NY2d 374 (1983).

That on or about (date) , in the county of (county), the defendant, (defendant's name), committed (specify Class B violent felony offense) and displayed what appeared to be a pistol, revolver, rifle, shotgun, machine gun or other firearm.

If you find the People have proven that element beyond a reasonable doubt, you must find the defendant guilty of this crime.

If you find the People have not proven that element beyond a reasonable doubt, you must find the defendant not guilty of this crime.